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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/508,447	05/16/2005	Vincent Ardizzone	12886-5	6702

30120 7590 10/30/2007  
ORRICK HERRINGTON + SUTCLIFFE LLP  
IP PROSECUTION DEPARTMENT  
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IRVINE, CA 92614-2558

EXAMINER
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COLQUITT, AARON BRUCE

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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10/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/508,447	<b>Applicant(s)</b> ARDIZZONE, VINCENT	
	<b>Examiner</b> Aaron B. Colquitt	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/20/2004</u> | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 and 11-12 of U.S. Patent No. 6971984. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the claims is in the preamble where one is directed to a device and the other to an apparatus for the face, which would be included in the claim for a device. With respect to the method claims these are directed to a method for using the claimed device.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5351389 to Erickson et al. and US 6942001 to Crider et al., and further in view of DE 3719331 to Hayduk or Cymatics Today article.

In Reference To Claims 1-14

Erickson teaches an invention related to pulsed electromagnetic field (PEMF) therapy that uses an anatomically contoured transducer to provide PEMF therapeutic stimulation to a target area of the skeletal system (col. 1, lines 19-25). Activation electronics are coupled to the primary winding of the transducers for selectively generating electromagnetic fields to implement a prescribed therapy program (col. 2, lines 5-10). The windings are of coated magnet wire and are wound around a flat mandrel with a triangular shape for the contoured triangular transducer (col. 2, lines 45-50). The shell is a semi-rigid shell made of a formable polyurethane elastomer, flexible enough to permit a patient to alter the shape of the transducer for maximum comfort (col. 2, lines 28-33). Drive electronics (14) is encapsulated into the shell of the transducer and a small circuit board carrying the drive electronics is coupled to the windings of the transducer, and through the cable (17) to the control electronics (16)

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module (col. 4, lines 29-35). The control electronics module (16) includes a PEMF processor for providing pulsing current to the front and back transducers at predetermined intervals, thereby activating the electromagnetic field according to a prescribed preprogrammed PEMF regimen (col. 4, lines 36-43).

The winding material is said to be a commercially available magnet wire (col. 5, lines 27-29), however Erickson does not disclose the type of magnet used.

Crider however, teaches a permanent magnet or electromagnet and discloses the use of ferrite (both bonded and sintered), rare earth, cunife, Alnico (Aluminum-Nickel-Cobalt), ceramic, Samarian cobalt, and neodymium.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a magnetic therapy device similar to that of Erickson and adopted the teachings of magnet types similar to that of Crider to select magnet types that have the highest resistance to demagnetization and can be machined to be very thin.

Erickson and Crider however do not teach of providing signals at various sound frequencies.

Hayduk teaches a suggested combination of equipment for therapeutic acoustic wave treatment with means for treatment by means of magnetic fields and that it is of importance to select the optimal frequency of the acoustic waves in a manner that is in the best possible way that the body can be treated.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a magnetic therapy device similar to that of Erickson and

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Crider and included the use of acoustic waves similar to that of Hayduk to make it possible to unite the advantages of both kinds of applications whereby not only add, but rather a strengthening effect can be obtained by using both kinds of therapies simultaneously.

Erickson, Crider, and Hayduk however do not explicitly teach the use of cymatic therapy as the form of acoustic sound therapy.

In the article of an interview with Elizabeth Colorio first published in Spirit of Ma'at: "Music of the Spheres" in October 2002, Colorio discloses that it is known to provide cymatic therapy by vibrations at particular frequencies and it is common to incorporate the use of a magnetic field that oscillates at the same frequency as the sound (acoustic) wave.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a magnetic therapy device as above and adopted the teachings of cymatic therapy similar to that of Colorio to unite the advantages of both magnetic and cymatic therapy to have two powerful healing effects in one handheld device.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2004/0133060 to Wilhelm et al. taught of sound therapy

US 5762616 to Talish taught of ultrasonic treatment to the torso.


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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron B. Colquitt whose telephone number is (571) 270-1991. The examiner can normally be reached on Monday-Friday 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC 10/17/2007

  
JOHN P. LACYK  
PRIMARY EXAMINER